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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,984	12/22/2000	Leon Batachia	22097-003	4295

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EXAMINER

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/746,984	Applicant(s) BATACHIA ET AL.	
	Examiner Daniel S. Felten	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 44-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 44-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/23/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Receipt of the amendment filed September 23, 2005 is acknowledged. Claims 1-24 and 44-59 are pending in the application and are presented to be examined upon their merits.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 9/23/2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 44-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Are you claiming an apparatus or a method for these claims?
5. Claims 11, 12, 21, 23, 53-55 recites the limitation "the policy" in the claims. There is insufficient antecedent basis for this limitation in the claim(s).

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 44-59 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. 35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, *or* composition of matter, *or* any new and useful improvement thereof" (emphasis added). Applicant's claims mentioned above are intended to embrace or overlap *two* different statutory classes of invention as set forth in 35 USC 101. The claims begin by discussing an apparatus (ex. preamble of claim 44), the body of the claim discusses the specifics of a method of generating an offer for a product and/or service (see above rejection of claims under 35 USC 112, second paragraph, for specific details regarding this issue). "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-24 and 44-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (US 6,134,534)

Re claims 1, 19 and 44:

Dynamically generating an offer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service pushing the offer to a customer via a wireless mobile device (see Walker, Abstract, col. 9, ll. 6-18).

Re claim 2, 20, 45:

receiving a customer request for the offer (see Walker, Abstract).

Re claim 3, 46:

wherein generating the offer further comprises: using an intelligent agent to generate the offer (see Walker, "*CPO management system*", col. 7, ll. 53-63; and col. 14, ll. 5-18).

Re claim 4, 16, 47:

wherein generating the offer further comprises: generating an offer package having a plurality of options (see Walker, fig. 6, col. 14, ll. 5-18; and col. 27, ll. 31-42).

Re claim 5, 48:

wherein generating the plurality of options further comprises: generating the options based on customer profile (see Walker, col. 5, ll. 19-36).

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Re claim 6, 49:

wherein generating the plurality of options further comprises: generating the options based on customer preferences (see Walker, col. 5, ll. 19-36).

Re claim 7, 50:

wherein generating the plurality of options further comprises: generating the options based on a predicted behavior of the customer (see Walker, “historical database” col. 14, ll. 5-18).

Re claim 8, 51:

wherein generating the plurality of options further comprises: generating the options based on a customer's perceived value (see col. 5, ll. 19-36).

Re claim 9, 52:

No shows are a common wherein generating the plurality of options further comprises: taking into consideration no-shows (see col. 8, ll. 10-24).

Re claim 10, 22:

wherein the generated offer is also based on the real-time location of the customer (see col. 9, ll. 6-18).

Re claim 11, 53:

wherein the policy is generated using heuristics (see Walker, Abstract).

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Re claim 12, 54:

wherein the policy is generated using an expert system (see col. 3, ll. 14+).

Re claim 13, 55:

wherein the policy is expressed in business rules (see col. 5, ll. 8-17).

Re claim 15, 56:

wherein dynamically generating the offer comprises: using environmental parameters (see col. 1, ll. 66 to col. 2, ll. 15)

Re claim 17, 58:

Receiving a customer's selection; and updating customer profile based upon the selection (see col. 21, ll. 27-42)

Re claim 18, 59:

Negotiating the offer with the customer's intelligent agent (see col. 21, ll. 27-42)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742.

The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DSF
December 09, 2005

Daniel S Felten
Examiner
Art Unit 3624



**VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
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